Dates of Decision: 27-11-95

04-12-95

12-12-95

14-12-95

15-12-95

corr.

Special Civil Application No.3006 of 1982

For Approval and Signature:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgment? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any other order made thereunder? Yes

5. Whether it is to be circulated to the Civil Judge? Yes

Mr.H.B.Shah,learned counsel for Mrs.Bhadrabala widow of deceased petitioner Bhupendra J.Shelat.
Mr.L.R.Pujari,learned A.G.P. for the respondent No.1.
Mr.J.M.Thakore, learned Advocate General for respondent No.2.

Coram: (M.R. Calla, J.)

Date: 27-11-95,4-12-95

12-12-95,14-12-95,

15-12-95

ORAL JUDGMENT:

1. This Special Civil Application is directed against the order dated 14-9-81 passed by the Legal

Department of the Government of Gujarat in the matter of grant of pension to Shri B.J.Shelat, ex Metropolitan Magistrate, Ahmedabad whereby one 1/3rd of the pension and 1/3rd of the gratuity was sanctioned and 2/3rd amount of pension and the gratuity were deducted under Rule 188 of Bombay Civil Services Rules,1959 (herein-after referred to as 'the Rules') with effect from 4-12-73.

2. The petitioner was a Judicial Officer and ceased to be in the service on 3-12-73 on the basis of the voluntary retirement. The present petition was filed on 6-5-82 and during the pendency of this petition,the petitioner expired on 23-8-95. Thereupon, an application was moved to bring his widow on record as his heir and legal representative and such application moved by his widow, namely, Bhadrabala on 11-9-95 was allowed on 12-9-95 and she was arrayed as the legal heir of the deceased petitioner.

3. The deceased petitioner had joined the services as a Resident Magistrate on 5-1-50 in the erstwhile State of Bombay. On 1-5-60 he was allocated to the State of Gujarat as Civil Judge (J.D.) & J.M.F.C. He was selected as a Magistrate for the city of Ahmedabad and was appointed as City Magistrate at Ahmedabad on 4-11-61.He was also called by the G.P.S.C. for selection as a City Magistrate against a permanent vacant post and on 6-12-63 after interview he was selected for the post and was given the first rank in the list of candidates selected for the purpose and had also been confirmed on the said post.

4. While he was working as a Metropolitan Magistrate at Ahmedabad, on 9-11-70 he submitted an application seeking voluntary retiremnent on the basis that he had completed 50 years of age on 4-12-68 and he intended to retire from 10-5-71 with reference to Rule 161 of the Rules. He was informed by the Registrar of the High Court in reply to the aforesaid notice seeking voluntary retirement on 11-1-72 that he may send a fresh application on the lines of his earlier application dated 9-11-70. However, the requirement of the Rule was completion of 55 years of age for the purpose of seeking voluntary retirement and, therefore, at that point of time, the petitioner could not voluntarily retire. He had delivered several judgments under the provisions of Food Adulteration Act during the period from 24-1-72 to 17-8-72. Against these judgments, Appeals were taken to the High Court during the period of 19-6-73 to 10-8-73. When these Apeals were pending before the High Court, on

17-7-73 he gave notice under Rule 161 of the Rules intimating his desire to retire from service on attaining the age of 55 years i.e. on 3-12-73. The retirement became effective on and from 3-12-73 and, thereafter, on 11-12-73 High Court issued an order of suspension pending the finalisation of the departmental proceedings against him which were under contemplation. He had then preferred a Writ Petition challenging the jurisdiction of taking disciplinary action against him after retirement. This petition was dismissed and the Letters Patent Appeal filed by him had also been dismissed on 24-12-73. He preferred a S.L.P. in the Supreme Court against the order of dismissal of the Writ Petition by the High Court and the Supreme Court on 25-4-75 allowed him to withdraw his petition reserving his right to agitate the question as to whether disciplinary action could be taken against him after retirement when final orders were passed inthe disciplinary inquiry against him. In the meantime, the charge-sheet was issued to the petitioner by the High Court on 16-1-74 and Inquiry Officer submitted his report on 25-7-74 holding that the charges were not proved.

5. High Court, however, did not agree with the findings of the Inquiry Oficer and the petitioner was called upon to show cause as to why a view different from the one taken by the Inquiry Officer should not be taken against the petitioner and why the punishment of dismissal from service should not be imposed upon the petitioner. The petitioner filed a reply to the above show cause notice explaining all the facts and circumstances appearing against him. However,the order was passed on 21-1-76 dismissing the petitioner from the services.

Dt:4-12-95

6. Against this order dated 21-1-76 the petitioner preferred Special Civil Application but the same was dismissed.The Special Leave Petition was filed before the Supreme Court against the order of the High Court and the Civil Appeal No.923 of 1977 was decided by the Supreme Court on 28-3-78. The Supreme Court held that the petitioner had already retired from the service and whereas he had effectively retired from the service, no disciplinary proceedings could be instituted against him after the effective date of retirmenet. The aforesaid decision of the Supreme Court is also reported in AIR 1978 SC 1109. In the result, the Supreme Court allowed the Appeal and set aside the order passed by the High Court without expressing any opinion on the correctness

of the decision taken by the apointing authority. Thereafter, an order was passed on 13-3-79 allowing the petitioner to retire with effect from 3-12-73. On 27-11-79 the Registrar of the High Court sent a notice to the petitioner calling upon him to show cause as to why the High Court should not recommend the reduction in the pension and gratuity. The petitioner submitted the reply dated 10-12-79 to the aforesaid notice. On 9-4-80 the Government passed an order for grant of payment of 50% of pension to the petitioner as admissible under the Rules by way of an anticipatory pension with effect from 4-12-73 until final orders are issued by the Government and no gratuity/death-cum-retirement gratuity was to be paid to him at this stage.

7. Thereafter, a notice dated 8-8-80 was issued superseding the earlier notice and the petitioner again filed the reply dated 11/15-9-80 and on 14-9-81 the order was passed reducing the petitioner's pension to the extent of 1/3rd by holding that the petitioner was not entitled to 2/3rd of the pension.It was held that the petitioner's services were not satisfactory and,therefore,only1/3rd of the pension and 1/3rd of the gratuity was sanctioned in accordance with the provsions contained in Rule 188 of the B.C.S.R. with effect from 4-12-73 with the further mention in the concerned order that the family of the petitioner should be given full family pension as and when due asper Rules.Against this order dated 14-9-81 the present Special Civil Application was filed.

8. An affidavit-in-reply with certain documents was filed on 25-4-94 under the signatures of the Deputy Registrar of the High Court of Gujarat seeking to traverse petitioner's claim.The matter had been partly heard in July,1995,but on 25-7-95 the learned A.G.P.sought time to place certain documents on record alongwith the affidavit and Mr.Shah appearing for the petitioner also sought time to move an application for amendment and to explain the documents,which were sought to be filed by the learned A.G.P.. The matter was, therefore, adjourned to 1-8-95. Before the matter could be taken up again for completion of arguments, the petitioner died on 23-8-95 and his widow Bhadrabala moved an application to be taken on record as the legal representative and this Civil Application No.2146 of 1995 was allowed to array the widow of the deceased petitioner as petitioner in place of the original petitioner on 12-9-95. The learned A.G.P. also filed a further affidavit-in-reply dated 23-11-95. The pleadings were thus completed and thereupon the arguments were concluded

by both the sides.

9. Rules 188 and 189 of the B.C.S.R. are reproduced as under:

"188. Government may make such reduction as it may think fit in the amount of the pension of a Government servant whose service has not been thoroughly satisfactory.

189. Good conduct is an implied condition of every grant pension. Government may withhold or withdraw a pension or any part of it is the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service provided that before any order to this effect is issued the procedure refered to in Note 1 to Rule 33 of the Bombay Civil Services Conduct,Discipline and appeal rules shall be followed."

10. Mr.Shah,learned counsel for the petitioner, raised following contentions :

Date: 12-12-95

(1) That the impugned order is not in terms of Rule 188 because the requirement of Rule 188 is that the reduction in the amount of pension may be made in case of Government servant, whose service has not been thoroughly satisfactory. But the order dated 14-9-81 does not state that the petitioner's services were not thoroughly satisfactory and it only says that his services were not satisfactory. In other words, the word "thoroughly" is conspicuously missing in the body of the order dated 14-9-81 and, therefore,the impugned order can not be said to have been passed in terms of Rule 188. In support of this contention, Mr.Shah has placed reliance on AIR 1968 Mysore 206,K.S.Rajasekhariah v. State.

(2) That the impugned order is not at all a speaking order and it is not supported by reasons. In suport of this contention, Mr.Shah has placed reliance on AIR 1976 SC 1785, Siemens Engg. and Mfg.Co.V. Union of India and on AIR 1990 SC 1984, S.N.Mukherjee v. Union of India. It has also been submitted that in this context, the order lacks fairness.

(3) That the order has been passed without considering and dealing with the several points, which had been raised by the petitioner in his reply to the show cause notice and the decision taken in this regard and the recommendation, which was made by the High Court to the Government for the purpose of passing the order of punishment against petitioner, suffer from vice of non-adjudication as the points raised by him in the reply to the show cause notice have not received the real and due consideration and,therefore, the punishment order passed against the petitioner suffers from the lack of the due consideration of the petitioner's case.

11. As against these contentions on behalf of Mr.Shah for the petitioner, Mr.Thakore,learned Advocate General appearing for the High Court,has argued that once it is mentioned in the impugned order that the services of the petitioner were not satisfactory, the question of the same being not thoroughly satisfactory simply does not arise and merely because in the body of the order the word "thoroughly" has not been used, it can not be said that the order has not been passed in terms of Rule 188, nor the order can be set aside on that ground.

12. In the case of K.S.Rajasekhariah v. State (Supra), the Division Bench of the Mysore High Court did consider that the words used in the relevant Rule was "thoroughly satisfactory", but no finding was recorded by the Government in the impugned order to this effect and instead, what was stated in the order was that the services of the petitioner has to be treated as unsatisfactory and that the Government did not form the opinion that the services of the petitioner was thoroughly satisfactory. Therefore, in the absence of the findings to that effect, the reduction of the pension of the petitioner was beyond the competence of the Government and,therefore, the impugned order was quashed. If the ratio of this case is applied to the facts of the present case,it may be in support of the petitioner. But I do not find myself to be in agreement with the reasoning given in the aforesaid decision of the Mysore High Court and while I respectfully disagre with the view taken by the Mysore High Court, it may be made clear that we have to go to the matter of substance and not the form in such cases. While as per the object of the Rule, satisfactory service is the implied condition for grant of the pension, the Rule says that the pension can be reduced if the services are not found to be thoroughly

satisfactory and the order says that the services were not satisfactory; meaning is, therefore, very clear that the services can not be thoroughly satisfactory. When it is expressed that the services were not satisfactory, the question of same being thoroughly satisfactgory simply does not arise. Similarly, when the Rule says that the pension can be reduced on the basis of the finding that the services of the Government servant was not thoroughly satisfactorty and the order states that the services of the petitioner were not satisfactory, it amounts to the finding that the services were not thoroughly satisfactory. There is no charm in the use of the words and we have to go to the matter of substance and for that reason, I differ with the view taken by the Mysore High Court in the aforesaid Division Bench decision and the first contention raised on behalf of the petitioner fails.

13. So far as the question of the impugned order not being a speaking order or an order not supported by reasons is concerned, I find that the Government order dated 14-9-81, which is impugned, by itself may not be a self contained order inasmuch as it does not detail out the reasons, but it was submitted by the learned Advocate General that in this order a reference is made to the letter dated 9-4-81 as was sent by the Registrar of the High Court of Gujarat and it is not disputed by Mr.Shah on behalf of the petitioner that the copy of this letter dated 9-4-81, which ofcourse has not been enclosed and sent to the petitioner alongwith the impugned order dated 14-9-81, had been made available to him on his request later on. This order dated 14-9-81 read with the Registrar's letter dated 9-4-81, which also contained a detailed decision of the High Court, show that the reasons have been given therein. Impugned order dated 14-9-81 has to be read alongwith the decision of the High Court as was contained in the Registrar's letter dated 9-4-81 and the same had been admittedly made available to the petitioner on his request. Copy of the letter dated 9-2-82, which was sent by Registered Post to the petitioner, under the signatures of the concerned Deputy Secretary, has been placed on record stating therein that a copy of the recommendations of the High Court is being sent and the factum of the receipt of the recommendations of the High Court is admitted before this Court. In this view of the matter, if the impugned order dated 14-9-81 is read alongwith the High Court's recommendations dated 9-4-81, it cannot be said that the order is not a speaking order as the reasons are contained in the recommendations made by the High Court. Nor it can be said that having received the copy of the recommendations

made by the High Court, the petitioner could not have effectively assailed the impugned order. Reasons in support of the order became very well known to the petitioner even before the filing of the present petition, which was filed on 6-5-82 whereas the recommendations of the High Court had been received by the petitioner in February,1982. Therefore, the impugned order can not be set aside on the ground that it is not a speaking order and it is not supported by reasons and,therefore, I need not deal with the cases cited on behalf of the petitioner on the question of the speaking order and that the order is not supported by reasons. Hence second contention also fails.

14. Now comes the last contention raised on behalf of the petitioner that the grounds raised by the petitioner have either not been considered or the same have not been considered in the correct perspective and that the old and stale cases, which were of no consequence, have been taken into consideration against him for the purpose of passing the order under Rule 188. The petitioner was initially given a show cause notice dated 27-11-79 from the Registrar calling upon him to show cause as to why the High Court should not recommend to the Government the reduction in the pension and the gratuity as admissible to him under the Rules. This show cause notice dated 27-11-79 was replied by the petitioner on 10-12-79. In the show cause notice dated 27-11-79 reference was made to three criminal cases in which the petitioner had passed orders and no other matter was included and it appears that after the receipt of the reply dated 10-12-79 filed by the petitioner, some more matters were sought to be included in the show cause notice for the purpose of reducing pension and besides the criminal cases, which had been mentioned in the earlier show cause notice, certain matters pertaining to the years 1959,1963 and 1969 and adverse confidential report for the period from 1-1-71 to 31-12-71 had also been included and now in all there were 11 items against the petitioner in the show cause notice dated 8-8-80, which was issued against the petitioner in supersession of the earlier show cause notice dated 27-11-79. This show cause notice dated 8-8-80 was replied by the petitioner vide his reply dated 11-15/9/80 wherein the petitioner had contested each and every ground raised against him in the show cause notice and he had filed a reply in detail alongwith certain documents and thereupon recommendations dated 9-4-81 were made by the High Court and on that basis the impugned order dated 14-9-81 was passed as aforesaid.

15. The grievance, which has been raised on behalf of

the petitioner is that old and stale matters have been taken into consideration against the petitioner for which he had neither been charge-sheeted nor any punishment had been given and while dealing with the reply, the petitioner's defence and explanation has not received an objective consideration in the correct perspective and certain aspects of his reply have been totally ignored and thus consideration of his reply lacks fairness and it cannot be said to be any consideration in the eye of law and the order of reducing pension could not be passed against the petitioner on the basis of stale matters with regard to which there was no proof against the petitioner. The learned Advocate General for the High Court and the learned A.G.P. has argued that this court cannot go into the question of the consideration of the reply as had been filed by the petitioner and whereas the recommendations had been made by the Full Court after considering the reply to the show cause notice filed by the petitioner,this Court may not enter into the appreciation of the case, which was pleaded by the petitioner in his reply to the show cause notice. Having heard the learned counsel and having gone through the show cause notices, the reply thereof and the recommendations dated 9-4-81, I am of the opinion that when it is the case of subjective satisfaction of the concerned authority, the Court may not take up the question of appreciation of fact so as to substitute its own view provided the subjective satisfaction is based on proper consideration of objective facts. Here is a case in which a retired person was sought to be subjected to reduction of the pension and it was certainly a question entailing penal consequences while discharging quasi judicial function and once it is found that objective facts pleaded by the party are ignored or are not considered for the purpose of forming an opinion and it is found that certain matters, which were not germane, have also been taken into consideration, this Court can not abdicate its function of making a judicial review on such matters, lest it will be a case of failure to discharge judicial function and the jurisdiction vested in the Court for the purpose of adjudicatory process dealing with important and valuable rights of the subjects, who seek to invoke the jurisdiction of this court. In other words, the arm of this court under Article 226 of the Constitution of India is long enough to reach injustice wherever and in whatever form it seeks to subject, precipitate or continue any suffering to any citizen. With this approach and orientation, I find it necessary to examine whether the objective facts pleaded in petitioner's reply dated 11/15-9-80 have received a due, fair and active consideration at the hands of the

concerned functionaries.

16. The first item against the petitioner in the show cause notice referes to the year 1959 and it is alleged that he had used some defamatory words against the accused. The petitioner in para 7 of his reply stated that the accused Pranlal Shah had appeared before him when the Judgment was being pronounced in the open court and he tried to create a scene so that the Judgment could not be pronounced and he wanted to create a ground for transfer of his case at the eleventh hour and he told him that he should not adopt such tactics. The actul word used was " " (tactics). While dealing with this reply, a mention has been made to the letter dated 2-9-60, which was sent to the petitioner by the High Court conveying that it was not proper for him to have created a situation in which he had to explain as to with what intention he used the aforesaid words and that it was not in consonance with his position to have used such words.

Dt: 14-12-95

However, the fact remains that no action whatsoever was taken against the petitioner at that point of time and the expression of the opinion contained in this letter dated 2-9-60 was advisory in nature and such advice can always be given by the higher authorities to its subordinates.

17. The next item relates to the year 1963 in relation to the purchase of a residential house bearing Plot No.11/B, Maharashtra Brahmin Co-operative Housing Society Ltd. and it was alleged against the petitioner that he did not submit the change in the landed property return in the prescribed form held by him as required by rule 15 of the Bombay Civil Services Conduct, Discipline and Appeal Rules (herein-after referred to as 'the Appeal Rules') and thereby he had committed breach of Rule 13 of the said Appeal Rules and the reliance was wrongly placed by the petitioner on the letter written to him by the Bombay High Court, as regards the application of Rule 13 of the Appeal Rules with regard to the proposed transaction of purchase of a plot of land at Borivalli and that this proposed transaction was disapproved by the High Court and that he had been informed by the Bombay High Court that he had committed breach of Rule 13 of the said Appeal Rules and his conduct was strongly disapproved and that he was called upon to file the

return as per Rule 15 of the said Appeal Rules in the prescribed form and to comply with Rule 13. The petitioner replied to the show cause notice that he had sent the intimation regarding this purchase to the Secretary of the Legal Department by his letter dated 30-10-63 through proper channel and did not withhold any information either from the High Court or from the Government. It was also submitted by him that he was only under an obligation to inform the authorities regarding the transaction entered by him for the purchase of the said property under Rule 13 and it was also clarified that previously when he intended to purchase a plot of land at Borivalli in the year 1963 he had adopted the same course of informing the High Court and the Government regarding the transaction. It has been categorically stated in this reply that his action was approved by the High Court and he contested that the Bombay High Court had never disapproved his conduct and, therefore, he has acted on the same line while entering into transaction for the purpose of the plot of land in the year 1963 at Ahmedabad. The petitioner contended that he was only under an obligation to inform the authorities and not to seek prior permission and that it was only after a period of 6 years that he was called upon to file the return as required under rule 15 of the Appeal Rules and to comply with the requirement of Rule 13 and accordingly he had complied with the said Rules and it is only at that stage that the High Court took the view that the petitioner ought to have sought permission before purchasing the said property, but he had acted under a bonafide belief that he was only bound under the Rules to inform the authorities and not to seek prior permission. Mr.Shah, learned counsel for the petitioner, has argued with reference to Rules 13, 14 and 15 of the said Appeal Rules and has submitted that the petitioner did not contravene any of the aforesaid Rules and the fact that the petitioner had sent the necessary intimation has not been disputed. Rule 13, the breach of which is complaint against the petitioner, is reproduced as under:

"13.(1) Save in the case of a transaction conducted in good faith with a regular dealer, a Government servant of gazetted rank, who intends to transact any purchase, sale, or disposal by other means, of moveable or immoveable property exceeding in value Rs.200 with a person residing, possessing immoveable property, or carrying on business within the station, district, or other local limits for which the Government servant is appointed, shall declare his intention to Government, the Commissioner in Sind, the Commissioner of

the Division, or the Head of his Department.Any such declaration shall state fully the circumstances, the price offered or demanded and, in the case of disposal otherwise than by sale, the method of disposal. Thereafter such Government servant shall act in accordance with such orders as may be passed by the Commissioner,the Head of his Department,or Government,as the case may be.

(2) Notwithstanding anything contained in sub-rule (1), a Government servant of gazetted rank, who is about to quit the station,district or other local limits for which he has been appointed, may without reference to any authority dispose of any of his moveable property by circulating a list of it among the community generally or by causing it to be sold by public auction."

While considering this part of the reply of the petitioner, it has been mentioned in the High Court's decision dated 9-4-81 that the petitioner was informed by the letter dated 17-10-69 that his conduct had been disapproved by the Judges of the High Court. It is clear from the discussion with regard to this charge mentioned in the above referred High Court's decision dated 9-4-81 that the points raised by the petitioner in this regard in his reply have not been considered at all. He has stated that his earlier conduct with regard to the purchase of the plot of land at Borivalli had been approved by the Bombay High Court and had not been disapproved and further that according to the Rules, he was only supposed to declare his intention to enter into the transaction and that he did not commit the breach of Rule 13 of the Appeal Rules. All these aspects have been totally ignored by making a simple reference to earlier letter dated 17-10-69. Thus, it is clear that the reply given by the petitioner has not received due consideration.

18. So far as charge No.3 is concerned,the petitioner had submitted in his reply that he had never been asked to explain his conduct towards the advocates and particularly his relation with one lady advocate as alleged and he had no idea as to what was the nature of alleged discreet inquiry made by the Chief Magistrate nor he was aware of any such report and that the allegation was based only on rumours and nothing was proved against him. No notice was ever served upon him to explain the allegations and he was never warned by the Chief Magistrate or by the High Court, although an application had been made in that behalf and even when the discreet inquiry was made by the Chief Magistrate. It has also

been stated that he had no idea about the number of the appearances of the so called lady advocate in his court and in other Courts. While dealing with the charge, all that has been said is that his explanation was not at all satisfactory and it has been taken as admitted that the said lady advocate had appeared in 49 cases in the Court presided over by the petitioner while her appearances in other courts were few. So far as the reply to the show cause notice is concerned, I do not find such an admission of the petitioner in the manner as stated in the High Court's decision. The petitioner has stated that the said lady advocate was working as a junior to one advocate Mr. P.M.Bhatt and the 49 appearances include her appearance with her senior and further that such appearances were not in respect of full-fledged proceedings and they include appearances in miscellaneous and remand applications over a period of three years between 1968 and 1970 and,therefore, there was nothing unusual in the aforesaid number of appearances. And yet it has been mentioned that it was an admitted fact and, therefore, the view taken with regard to charge No.3 appears to be erroneous and appears to be founded on a non existent fact contrary to the record. No Officer is expected to keep a record of the number of appearances of a particular lawyer and number of appearances of a lawyer in a particular court depend upon the type and the nature of the work, which such lawyer may have. A lawyer practising in criminal side may not have any appearance or only few appearances in Civil Court and this is a fact which can be taken notice of that number of appearance of any lawyer in a particular court depends upon the nature of the work, which he or she may have and merely because a lawyer has more number of appearances in a particular court or frequent appearances in such court and has less number of appearances in other courts, the same can not be used as a fact to say that the Presiding Officer has relations with such lawyer.

On such flimsy, feeble and conjecturous basis, even if a little finger is raised against the conduct of a Presiding Officer, it would tantamount to a serious invasion of the independent and fearless functioning of a Judicial Officer. It is thus clear that the petitioner's reply on this charge has also not received a fair consideration in the decision dated 9-4-81.

19. Fourth charge relates to his proceeding on leave without handing over charge of the post before the due date. This allegation relates to August, 1969 and the petitioner has submitted in his reply to the show cause notice that the date was wrongly mentioned by him through

oversight and his explanation clarifies the whole position. It has been further stated that the mistake was rectified latter on and, therefore, it could not be viewed so seriously against him to take such a drastic action. Here also I find that in this regard an intimation was given to him that he should be more careful in such matters and it is not the case of the respondents that thereafter any such mistake or oversight in the matter of mentioning the date was repeated by the petitioner and the mistake of proceeding on leave before handing over the charge was repeated thereafter. It appears that it was really a trivial instance. It is a different matter altogether to be said that the explanation was not satisfactory. The explanation given by him has not been disbelieved. Whether it is satisfactory or not is certainly a case of subjective satisfaction, but that could not be used for the purpose of Rule 188 as a material to form an opinion that his services were not satisfactory. Punishment should be directed against mischief and not against a pardonable mistake.

20. The next charge against the petitioner was that he used to keep 40 to 50 cases on Board besides miscellaneous cases daily, out of which hardly 10 were taken and the rest were adjourned at 5.30 in the evening and the Chief Magistrate had made him aware of that situation. The petitioner had replied that he had been appointed to deal with the riot cases and had also been assigned the duty in the riots as a Magistrate. The Court was heavily burdened with regular cases and with the production of the accused in number of cases and the persons, who were produced by the Police, for recording their statements under S.164 of the Criminal Procedure Code. It was, therefore, difficult for him to exhaust the entire Board. He has made a reference to Chief City Magistrate's letter dated 17-10-79 whereby the information was sought in relation to the cases arising out of the recent riots, which were expected to be filed by the police in the Court. It has been stated by the petitioner that it had never happened in his Court that out of sheer negligence he had not informed the parties-accused persons, complainant or witnesses during the course of the day that their cases are not likely to be taken up on the particular day. The petitioner has also submitted that his explanation had not been sought in this behalf. Again I find that such an explanation in detail has not been given due consideration and the same has been brushed aside by saying that the explanation in this behalf was not at all satisfactory. Without considering the detailed explanation given by the

petitioner, it could not be ignored simply by saying that the explanation was not satisfactory. The petitioner's specific case, on this aspect of the matter, that his explanation had not been sought at the relevant time, has not even been noted.

21. With reference to item No.6 of the charge, it may be straightaway observed that the petitioner's detailed explanation has been disposed of in a slipshod manner by saying that the explanation, as contained in paragraphs 21 and 22, was not at all satisfactory and such a consideration is no consideration in the eye of law.

22. The next item relates to the adverse remarks in the annual confidential report of the petitioner for the year 1971 i.e. from 1-1-71 to 31-12-71 and it is alleged that the said remark was that the petitioner did not enjoy a good reputation about his integrity and personal character. The petitioner submitted in his reply to the show cause notice that he had not been conveyed such adverse remarks in the annual confidential report of the year 1971 at any point of time and the same were never brought to his notice. In this regard, the learned Advocate General, after making an inquiry into the Registry of the High Court and having verified from the record of the High Court, submitted that there is no record to show that these remarks had been ever conveyed to the petitioner. Whereas it was stated in the affidavit-in-reply dated 19-4-94 filed under the signatures of one Shri G.M.Malvat, Deputy Registrar of the High Court in para 31 that, "It is denied that the petitioner was not given any opportunity to make any representation against the adverse remarks against him. I say that on each occasion remarks required to be conveyed had been duly communicated to the petitioner." In the wake of this reply, the learned Advocate General was called upon to show from the record as to whether the adverse remarks had been conveyed so as to ascertain that the opportunity was given to the petitioner to make representation against the adverse remarks. The statement made by the learned Advocate General that no such record is available in the Registry to show that the remarks have been conveyed, coupled with the petitioner's assertion in the reply to the show cause notice that such remarks had not been conveyed to the petitioner, make it amply clear that the remarks had not been conveyed and such uncommunicated remarks of the year 1971 could not be made use of against the petitioner after his retirement for the purpose of reducing his pension and I find that while dealing with this aspect of the reply of the petitioner, the High Court's decision dated 9-4-81 is

conspicuously silent and not a word has been stated with reference to the petitioner's grievance of not communicating the adverse remarks. Naturally the same could not be used against him.

23. The next item, which has been considered against the petitioner, is that the petitioner while presiding over 9th Court, City Magistrate, Ahmedabad on 20-4-77 addressed an advocate that, "even the barbers are keeping the chairs of the value of Rs.1200/- and that they incur expenses for their constituents whereas you lawyers does not keep stamp in your pocket." An exception was taken to the use of such a vocabulary by the petitioner for a lawyer. Petitioner's reply was that all that he meant was that the stamp should have been kept readily available so as to avoid any delay, but this was hardly a matter, which could be made a ground for withholding his pension. It has been observed in the High Court's decision dated 9-4-81 that the petitioner's explanation had been called in this regard, he was specifically informed that the petitioner was not discreet enough in choosing respectable language. However, the fact remains that for this matter also no punitive action was taken against the petitioner and such a casual utterance without any recurrence of such incident thereafter, could be hardly sufficient at this stage to deduct the pension, particularly in the light of the meaning and intention clarified by him in the reply.

24. Items Nos. 9, 10 and 11 relate to the orders passed by the petitioner in Food Adulteration Cases for which his explanation had also been called at the relevant time in past. The petitioner has submitted in para 27 of his reply to the show cause notice that these very items were the subject matter of inquiry against him and the inquiry, which was held on these items against the petitioner, had been found to be unlawful by the Supreme Court and the Supreme Court had taken the view that the inquiry could not be held. The petitioner has submitted that the Principal Judge of the City Civil Court at Ahmedabad had not found him guilty.The High Court did not agree with the findings of the Principal Judge and held that the charges were proved. The Supreme Court had held that the entire proceedings were without jurisdiction. In this view of the matter, when the inquiry itself was found to be unlawful by the Supreme Court, it could only be said to be unsafe to act upon such findings for the purpose of Rule 188 to deduct the pension and gratuity.

Dt: 15-12-95

These judicial orders passed by the petitioner came up before the High Court in Criminal Revision Applications No.505 and 534 of 1972, which were Criminal Revision Applications (suo motu). Besides this, Criminal Revision Applications No.508 to 511 of 1972 also came up before the High Court. The orders passed by the petitioner were criticized and were found to be contrary to law, but ultimately conviction, sentence and the fine ordered by the petitioner in these cases was not disturbed and the notices of enhancement of punishment had also been discharged. While deciding these Revision Applications,it has also been observed that the allegations in the affidavit-in-reply, the original affidavit and the statement recorded by the court should be sent to the Chief Justice for doing what is considered proper in the matter on administrative side and it was in the wake of these orders passed by the High Court on judicial side that the inquiry, as aforesaid, was held against the petitioner. In the decision dated 10-8-73, which was rendered in Criminal Revision Application Nos.508 to 511 as a common order at page 3, the Court observed as under:

"The learned Magistrate, if he had taken little care to examine the provisions of section 16 he would have immediately found out that in the case of ghee which contained foreign fat,the case of the accused would not be covered by the proviso and therefore, he would have no jurisdiction to impose anything less than the minimum sentence prescribed by law, namely imprisonment of six months and a fine of Rs.1000- It would thus appear that the order of sentence made by the learned Magistrate, at least in Criminal Revision Application No.508 of 1972,is clearly illegal and thoroughly unsustainable. It is contrary to law and beyond the jurisdiction of the learned Magistrate, In other cases one can find some semblance of justification for the sentence awarded by the learned Magistrate in that for adequate and special reasons, the learned Magistrate has jurisdiction to impose less than the minimum sentence if the case was covered by the proviso. But where the case is not covered by the proviso, whatever may be the circumstances in which the accused committed offence,the learned Magistrate has no jurisdiction to award less than the minimum sentence prescribed by law. Therefore, the order of sentence at least in one case is clearly illegal and without jurisdiction."

However, it is stated at Bar by Mr. Shah and not

controverted by the learned Advocate General that whatever observations were made against the conduct of the petitioner in these Criminal Revision Applications by the High Court on judicial side had been made without any notice to the petitioner and the matter was left for the Chief Justice to deal with the same appropriately on administrative side. On administrative side, the inquiry was held, as has already been referred to hereinabove, and the inquiry proceedings were found to be unlawful by the Supreme Court and it could not culminate into any punishment against the petitioner. In the entire background, as aforesaid, in my considered opinion, the allegations in relation to the passing of these judicial orders by the petitioner with reference to Item Nos.9 to 11, which have been used against him, could not have been made use of for the purpose of Rule 188.

25. Having considered all the eleven items ad-seriatim, as above, the replies thereto filed by the petitioner and the way in which they have been dealt with in the High Court's decision dated 9-4-81,I am of the considered opinion that none of these items by itself or all the items put together could be made use of for the purpose of deducting or reducing the pension of the petitioner. There is no dispute that allegations were levelled against the petitioner with reference to each of these items, but the fact remains that there had been no regular inquiry for any of these items and in absence of inquiry, the allegations could not be read as the proof of the allegations by itself. Had there been any punishment against the petitioner on any of these items, something could be said against him warranting the action under rule 188, but the fact remains that in a long span of the service of 23 years, the petitioner had neither been punished nor he was ever superseded. Thus, I find that the matters, which ought not to have been taken into consideration, have been taken into consideration to the prejudice of the petitioner and the issues, which the petitioner had raised in his reply, which should have been gone into before recommending reduction in pension, have either not been considered at all and if considered, the same has neither been considered in the correct perspective nor the petitioner's reply has received a fair consideration. Against most of the items,the replies given by the petitioner have been brushed aside by saying that the explanation was not satisfactory. How the explanation was not satisfactory , in what manner the explanation was not satisfactory and how the explanation given by the petitioner was not convincing, all these aspects have been totally ignored and bald mentions have been made that his explanation was not satisfactory.

There were more than one items, which were in fact very trivial in nature and could hardly form the basis for reduction of pension. To me it appears that the action, which has been taken against the petitioner, is not based on considerations, which can be said to be germane for the purpose of Rule 188. In case of a Government servant, who has rendered a service over 23 years and who has not been punished even once, has not faced any supersession, how an opinion can be formed, on the basis of the allegations, which might have been a subject matter of dispute during the course of the service, so as to say that his service was not satisfactory and so as to disentitle him from the valuable retiral benefits earned by him. There was ample opportunity with the respondents to hold detailed inquiries against the petitioner on all these allegations at appropriate time, but at the relevant time, inquiries were not held and by way of correspondence, adverse opinions had been expressed. Be that as it may, the charges of the allegations by itself can not be held as the proof of the charges and allegations as has been done in the instant case. In a given case, the services may not be commendable, but at the same time, the services, which are not commendable, can not be said to be unsatisfactory. A distinction has always to be made between a conduct or the service, which can be said to be commendable or a service, which could be said to be satisfactory. Even if a person has remained an average officer and has not suffered any penalty or supersession, the services of such an employee has to be taken to be satisfactory for the purpose of the grant of the pension and it is the trite law that no punitive action can be taken unless there is a case of proved misconduct. If a person has worked for such a long period of service, his actions or the manner of working may come under some criticism, may not be liked by his superiors and there may be a difference of opinion, sometimes the allegations and counter allegations may also be imputed for reasons more than one, but that by itself is hardly sufficient to brand the services as not satisfactory for the purpose of reducing the pension and invoking Rule 188.

26. The upshot of the entire discussion, as aforesaid, is that the order of reducing the petitioner's pension and gratuity as contained in the impugned order dated 14-9-81 Annexure 'I' to the petition issued under the signatures of the Under Secretary to the Government can not be sustained in the eye of law and the same is hereby quashed and set aside except for the part of the order contained in para 3 thereof, which is clearly severable by the doctrine of severability from the rest

of the order. The petitioner's widow shall, therefore, be entitled to all the benefits as if the punitive part of the order has never been passed against her deceased husband and she will be entitled to all the consequential benefits. All the benefits, to which the petitioner's widow is found entitled, shall be made available to her within a period of three months from the date the certified copy of this order is served upon the respondents.

27. Special Civil Application is accordingly allowed. Rule is made absolute in the aforesaid terms. No order as to costs.

-0-